

TENTATIVE RULINGS for CIVIL LAW and MOTION February 24, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Davis Group v. Murray**
Case No. CV PT 10-39

Hearing Date: **February 24, 2010** **Department Fifteen** **9:00 a.m.**

This matter is continued on the Court's own motion to Friday, March 5, 2010, at 9:00 a.m. in Department 15.

If no hearing is requested, this tentative ruling is effective immediately. Plaintiff shall serve a copy of the tentative ruling on defendants. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Gonzalez v. Ramirez**
Case No. CV UD 10-131

Hearing Date: **February 24, 2010** **Department Fifteen** **9:00 a.m.**

Defendants' demurrer is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., §§ 430.10 & 1161 et seq.) The complaint fails to state a cause of action because it is predicated on a three-day notice that entirely omits a statutory requirement. (*Baugh v. Consumers Associates, Ltd.* (1966) 241 Cal.App.2d 672, 675.)

If no hearing is requested, this tentative ruling is effective immediately. Plaintiff shall serve a copy of this tentative ruling on defendants. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **People v. Broderick Boys**
Case No. CV CV 04-2085

Hearing Date: **February 24, 2010** **Department Fifteen** **9:00 a.m.**

Timothy Acuña's motion to strike and for monetary sanctions: The motion to strike is **GRANTED** as to the Declaration of Officer Jose Zuniga, filed on August 28, 2009. (Code Civ. Proc., § 2015.5; *Kulshrestha v. First Union Commercial Corp.*(2004) 33 Cal.4th 601.) The motion to strike is **DENIED** in all other respects.

Defendants were given an opportunity to present supplemental opposition papers and to request further additional time to oppose the People's motion. As for Mr. Acuña's motion to strike the supplemental declarations of police officers filed on August 31, 2009, except for the Declaration of Officer Jose Zuniga, the People filed revised supplemental declarations that corrected the defective jurat in the original supplemental declarations. The Court deems the People's Supplemental Separate Statement of Facts to refer to the revised supplemental declarations of police officers filed on November 9, 2009, instead of the original supplemental declarations filed on August 31, 2009.

The Court cannot conclude that the People presented the supplemental declarations of police officers in bad faith or solely for purposes of delay. (Code Civ. Proc., § 437c, subd. (j).) Accordingly, the request for monetary sanctions is **DENIED**.

Timothy Acuña's evidentiary objections to the People's revised supplemental declarations of police officers: Evidentiary objection numbers 3 (hearsay), 158 (as to the reference to membership in "Varrio Northside Sacra" only), 237-239 (hearsay), 264 (hearsay), 393 (hearsay and lack of foundation), 400 (hearsay), 403 (hearsay and lack of foundation), 410 (hearsay), 417 (lack of relevance because there is no expert opinion about Navarette's gang membership), 438 (lack of foundation), 501 (lack of foundation), 503 (lack of foundation), 568 (lack of foundation), 577 (lack of relevance of a gang called "SACRA"), and 581 (as to "Wolfington is a validated Broderick Boy" only on lack of foundation ground) are **SUSTAINED**.

The following evidentiary objection numbers are **SUSTAINED** on the ground that the declarant does not state that the incident or acts described occurred in or are connected with the Safety Zone: 13 (as to "parolee" only), 14, 20, 26-34, 36-40, 43-44, 117 (as to "is currently on probation" only), 123 (also improper expert opinion), 126-127 (also lack of foundation), 129 (also lack of foundation), 130-134, 138, 140, 148, 154-157, 160-161, 164, 171-173, 175a-176, 187 (also lack of foundation), 189 (as to "is on searchable probation" only), 192 (as to "on searchable probation" only), 193-194, 199, 201-203, 206, 210, 215, 217 (also lack of foundation), 219 (also improper expert opinion), 220-221 (also no fact stated which shows the relevance of the reference to "Varrio Diamonds Sacra."), 222, 224-228, 231, 235 (also improper opinion testimony), 242, 244-245, 247, 248 (also lack of foundation), 258-260, 265 (as to "on probation" only), 266, 272, 283 (as to "on searchable probation" only), 285, 288, 290 (also no fact stated which shows the relevance of the reference to "Varrio Diamond Norteno"), 292-295, 296 (also no fact stated which shows the relevance of the reference to "Oak Park Norteno"), 298-300, 307, 309 (also lack of foundation), 314, 319, 322-329, 336 (as to "A bloody white tee shirt was found in the home, a small knife, cell phones, a black glove" only), 339 (also lack of foundation), 341-343, 350 (also lack of foundation and no fact stated which shows the relevance of the reference to "the Red Nose Pits"), 354-355, 364, 375, 379-380 (also lack of foundation), 381, 386-387, 388-392 (also lack of foundation), 394, 399, 401-402 (also lack of

foundation), 404, 409, 411-416, 428-430 (also lack of foundation), 434-435, 437, 439-443, 457, 458 (also lack of foundation), 463, 465-466 (also lack of foundation), 469-470, 475, 498, 500, 502, 517, 531 (also lack of foundation as to the statement that Martinez understood an admonition), 544-545, 547, 549-550, 552-557, 558-564 (also lack of foundation), 565, 567, 569, 570 (also lack of foundation and no fact stated which shows the relevance of the reference to "Varrio Diamonds"), 571 (also lack of foundation), 572-574, 575 (also lack of foundation and no fact stated which shows the relevance of the reference to "Varrio Sacra" gang), 576, 578 (also lack of foundation), 579-580, 582 (also improper opinion testimony), 595-596, 599-601, 603, 605-609, 615, and 616 (also lack of foundation).

The following evidentiary objection numbers are **SUSTAINED** on the grounds that the declarant does not state that the incident or acts described occurred in or are connected with the Safety Zone and hearsay, for which an exception has not been established: 15-19, 21-25, 41 (as to the reference to photographs of Daniel Orozco displaying gang signs for "Varrio Cinco" only), 116, 118-122, 124-125, 128 (no fact indicating that the hearsay statement is reliable such that an expert may rely on such hearsay evidence to form an expert opinion), 141-146, 149, 165-170, 174-175, 177, 178-179 (also no fact stated which shows the relevance of the reference to "Norteno Ryders"), 195-196, 204 (also no fact stated which shows the relevance of the reference to "Barrio Cinco"), 208-209, 211-213, 214 (no fact indicating that the hearsay statement is reliable such that an expert may rely on such hearsay evidence to form an expert opinion), 216, 218 (also no fact stated which shows the relevance of the reference to the "Del Paso Heights Nortenos"), 230 (also no fact stated which shows the relevance of the reference to "Norteno/Varrio Cinco"), 232-234, 249-255, 257, 261-262, 273 (also no fact stated which shows the relevance of the reference to "Varrio Cinco"), 275-282, 286, 297, 301, 308, 310-311, 315-318, 335, 340, 344-349, 351-353, 356-363, 365-374, 376-378, 382, 385, 395-398, 405-408, 418-427, 431-433, 444-446, 447-448 (also improper opinion testimony), 449-454, 456, 459-462, 464, 471-474, 476-497, 499, 504-516, 518-530, 532-543, 548, 551, 566, 583, 585-594, 597-598, and 610-614.

Evidentiary objection numbers 147, 158 (as to membership in Norteno only), 162-163, 188, 190, 197, 200, 229, 243, 302-306, 330-334, 338, 467-468, and 584 are **OVERRULED**. The evidence cited in these objections, although hearsay, is admissible for the purpose of laying a foundation for an expert opinion. An expert may rely on reliable hearsay information, including information obtained from law enforcement officers and police reports. (*People v. Gardeley* (1996) 14 Cal.4th 605, 618; Calif. Expert Witness Guide (2nd ed. Cont.Ed.Bar 1991) §4.1.)

All other evidentiary objections are **OVERRULED**.

The People's request for judicial notice filed on June 29, 2009: The People's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

The People's motion for summary adjudication: The People seek summary adjudication of the following issues:

- (1) A public nuisance pursuant to Civil Code sections 3479 and 3480 exists in the proposed Safety Zone.
- (2) The public nuisance in the proposed Safety Zone is “substantial” and “unreasonable.”
- (3) Injunctive relief is the appropriate and necessary remedy to abate the public nuisance in the proposed Safety Zone.
- (4) Defendant Broderick Boys is a “criminal street gang” within the meaning of Penal Code section 186.22, subdivision (f).
- (5) Defendant Broderick Boys, acting through its members, is responsible for the public nuisance in the proposed Safety Zone.
- (6) Each of the remaining represented individual defendants is a member of the alleged gang.
- (7) Defendant Broderick Boys is an unincorporated association within the meaning of Code of Civil Procedure section 369.5, subdivision (a) and a jural entity capable for being sued pursuant to *People v. Colonia Chiques*.

The People’s motion is **DENIED**. (Code Civ. Proc., § 437c, subd. (f)(1).) None of the individual issues in (1) through (6) completely disposes of a cause of action or claim of damage. The motion as to issue (7) is also not subject to summary adjudication. Default against the Broderick Boys was entered on October 9, 2009.

The People’s motion for summary judgment: The People’s motion concerns only 11 of the named defendants. The People seek summary judgment/adjudication against the following defendants only: Timothy Acuña (Cartoon), Thomas Cedillo, Alex Estrada (Otter), Jesse Garcia (Smokey), Robert Montoya (Little Rob), Michael Morales, Rudy Ornelas, Guillermo Duke Rosales (Duke), Rudy Tafoya (Rude Dog), Felipe Valadez, Jr. (Shug), and Billy Wolfington (Bouncer) (hereafter “Defendants”).

To prevail, the People must prove that the Broderick Boys gang is responsible for the public nuisance to be abated in the Safety Zone, and Defendants are members of the alleged gang. (*People ex rel. Gallo v. Acuña* (1997) 14 Cal.4th 1090, 1125.)

A triable issue of fact exists about whether the alleged gang is a “criminal street gang,” a fact which the People’s moving papers concede is a material fact. (Hernandez Declaration ¶¶ 1-6 and “Professional Vitae” attached thereto.)

The first amended complaint alleges an existing and continuing nuisance problem in the Safety Zone. (*See, e.g.*, First amended complaint ¶ 25.) To prevail on their action for public nuisance, the People must establish the existence of a present condition or the potential or possibility of future injury. (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1213; Civ. Code, §§ 525 and 526.) There is a triable issue of material fact about whether a public nuisance by the alleged gang and its members exists and/or is reasonably likely to occur in the Safety Zone. (Exhibits K-P, S, T, Y, AA, FF-JJ, LL, MM, OO, QQ, and RR to Merin Declaration.)

A triable issue of material fact exists about whether some of the Defendants are members of the alleged gang. Timothy Acuña, Thomas Cedillo, Alex Estrada, Jesse Garcia, Robert Montoya, Rudy Tafoya, and Felipe Valadez, Jr. deny membership in the alleged gang. (Exhibits C-I to Merin Declaration.) “In ruling on a summary judgment motion, the trial court may not weigh the evidence in the manner of a factfinder to determine whose version is more likely true.” (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.) If evidence is controverted by other evidence, there is a “triable issue” of fact and summary judgment must be denied.

For the above reasons, the People’s motion for summary judgment is **DENIED**.

TENTATIVE RULING

Case: Professional Collection Consultants v. De La Fuente
Case No. CV G 09-1838

Hearing Date: February 24, 2010 Department Fifteen 9:00 a.m.

Plaintiff’s motion to vacate, lift and set aside dismissal under Code of Civil Procedure section 473 is **DENIED**. (Code Civ. Proc., §§ 473, 395 & 396a.)

If no hearing is requested, this tentative ruling is effective immediately. Plaintiff shall serve a copy of this tentative ruling on defendants. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: Reyes et al. v. Palmetto Hospitality of West Sacramento I, LLC
Case No. CV CV 09-1551

Hearing Date: February 24, 2010 Department Fifteen 9:00 a.m.

Plaintiffs stipulated motion for leave to file a first supplemental complaint to foreclose on bond for release of mechanic’s lien and to foreclose on bond for release of mechanic’s lien is **GRANTED**. (Code Civ. Proc., 464.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, is required.